

1895-004 Chancery Causes: W. S. Ball vs. Louisville & Nashville Railroad Co]  
Lee Co

CA- Contract Dispute  
T- Property  
Transportation



AUG 10 1888

LOUISVILLE,  
LEE CO.

DATE CITY,  
SCOTT CO.

1 To the Hon. H. S. K. Morrison Judge  
2 of the Circuit Court of Lee  
3 County, Virginia:

4 Your orator M. S. Ball, who  
5 humbly complaining would  
6 respectfully represent that on  
7 the 31<sup>st</sup> day of August 1889, he  
8 made and executed to the Louis-  
9 ville & Ashville Rail Road Company,  
10 a body Corporate, under and by  
11 virtue of the Laws of Kentucky  
12 and Virginia, and doing business  
13 in the State of Virginia, for a right  
14 of way over and through your  
15 orators land, situated in said County,  
16 near Balls Bridge and to the west  
17 thereof. The distance and number  
18 of acres and particular description  
19 of the land so conveyed is fully  
20 shown by a copy of said deed  
21 herewith filed, as part hereof marked  
22 "Deed"

23 The land through which this road  
24 and right of way passes is in  
25 the Owens Valley, and the lands are  
26 gently rolling, except along the  
27 banks of Indian Creek, where they  
28 break off into cliffs and high  
29 banks in places. At other points  
30 they are level and smooth; the said  
31 road is located and now constructed  
32 as far as it passes through your



1 orators land, ~~along~~ near the said  
2 Indian Creek, and on the north bank  
3 thereof, in places running near the  
4 Creek and at others further away.  
5 Your orator resides, and much of his  
6 best land lies north of the Rail Road;  
7 but much of his timber and pasture  
8 land, lie south of the Rail Road and  
9 on both sides of Indian Creek; so that  
10 in the use of the pasture land, and  
11 timber land, he has to cross both  
12 the Rail Road, and Indian Creek, and  
13 his fields are, and always have been  
14 fenced in the main by cross fences  
15 running north & south at nearly  
16 right angles to the Rail Road and  
17 Indian Creek. So that it was ap-  
18 parent in the effort to locate said  
19 road that in passing the bends in  
20 said Creek irregular portions of his  
21 fields would be cut off between  
22 the Rail Road and Indian Creek, and  
23 thus greatly derange, and interfere  
24 with the situation of said fields and  
25 farm, and materially affect their use & convenience.  
26 Owing to this fact and fearing  
27 a contention, as to the necessary cross-  
28 ings and Cattle guards your orator  
29 would not make said deed, with-  
30 out stating plainly therein, upon  
31 what Condition it was made, and  
32 so by an inspection thereof it



1 will be seen, That in Consideration,  
2 among other things, that said Rail Road  
3 Company, "erect, maintain and keep  
4 in good repair suitable, Convenient and  
5 necessary Crossings, and Cattle guards,  
6 at such points as said Rail (your order)  
7 shall designate over said road" he conveyed.

8 Your order has repeatedly called  
9 upon the road Master, Section Super  
10 or foreman, engineers and even the  
11 Genl. Manager, to put in for time  
12 so much as two very badly needed  
13 Crossings, and to construct the cattle  
14 guards, so as to turn the stock. - In  
15 response to this, the road men put  
16 in one Crossing at the proper point;  
17 but soon thereafter encountered the same  
18 so that it can not be used, and thus  
19 leaves a valuable piece of land, of  
20 about 15 acres, with no possible way  
21 to <sup>get to</sup> it, except over the ordinary track  
22 of a rail road and this, at a point  
23 usually used for a farm, road before  
24 the rail road was constructed.

25 The <sup>existing</sup> ~~so~~ Cattle guards between the fields  
26 and other farms serves no practical  
27 purpose, Cattle, hogs & horse pass  
28 over them, with but very little trouble  
29 they are mere, slats put down length-  
30 wise, with no pit; and the stock pass  
31 but very little attention thereto.  
32 And by reason of this defect, your



1 has suffered great trouble in con-  
2 venience and damage, to his grain, grass  
3 & Crops - The said road made an other  
4 effort or two, to put in a crossing  
5 one at a steep bank or cut up  
6 which no animal, such, as a horse,  
7 Cow sheep or Hogs, could possibly  
8 pass, on the north side, and reaching  
9 cut - on the south side, it went  
10 down some ten feet - over a cliff  
11 & steep bank into Medicine Creek, this  
12 they abandoned, & afterwards here cut.  
13 Your orator has often called on the  
14 Atty for the road and asked that the  
15 crossings & Cattle guards be put in  
16 at the points designated by him,  
17 Your orator, so, as to enable him to  
18 use & enjoy his property. The farm  
19 is a large and valuable one, and  
20 used for grazing and agisting pur-  
21 poses, as well, as for grain; and the  
22 failure to make these crossings, and  
23 Cattle guards has greatly in-  
24 convenience and damaged Your  
25 orator, these damages resulting from  
26 this neglect has caused Your orator, out  
27 less than \$1000. & damages; and by the fail-  
28 ure to construct sufficient Cattle guards  
29 he has sustained not less than \$500, & to  
30 grass grain & Crops by the intrusion of  
31 stock passing in over & through said  
32 defective Cattle guards, none of which has  
ever been paid.



(5).

1 As before stated, this farm is at a  
2 place long known, as Bulls bridges  
3 that is where the main valley state  
4 road crosses Indian Creek, and at  
5 this place, has long been a trading  
6 post & place of public gathering.  
7 By reference to said deed it will  
8 be seen that part of the Consider-  
9 ation of said deed was the benefit  
10 that was to flow to your crater by  
11 reason of the Construction of said  
12 road. No possible benefit could  
13 flow to him, unless, as was then gen-  
14 erally understood said road would  
15 make a side track and stop, at that  
16 place, that was what he, <sup>your orator,</sup> was in-  
17 duced to believe would be done, by  
18 the atty procuring said deed, and the  
19 engineer in Chief, of the road, at the  
20 time of Construction. And right at this  
21 point your crater, has a store dwelling  
22 house for his employees, and other build-  
23 ings, and it became necessary, ow-  
24 ing to the flat surface of the ground to  
25 cut two ditches, leading through them  
26 landy one to the east & one to the west  
27 of the County road, where it crosses the  
28 trail road, and both leading south to  
29 Indian Creek, some 150 feet or more  
30 The resident engineer, one Jackson  
31 in charge of the work at that point,  
32 applied to your crater to cut these ditches



1 over and through your craters, cuts and  
2 lands; at that time, your crater be-  
3 gan to suspect that said Company did  
4 not intend to make said stop, as he had  
5 been led to believe, and he positively  
6 refused to grant the privilege, until  
7 the ~~land~~ <sup>Company</sup> agreed to put in the side  
8 track and make the stop. This the said  
9 Jackman finally agreed to, and cut  
10 the ditches now used and enjoyed by said  
11 road upon that Contract and agree-  
12 ment and no other; and your crater  
13 was further misled, because there was  
14 a side track put in, and stops of  
15 the train made at the point during  
16 Construction - but when the road was  
17 completed this was torn out and car-  
18 ried away, and claimed to be the prop-  
19 erty of the Stone Contractor, for it  
20 had been mostly used for loading  
21 Stone quarried near by.

22 Your crater is advised that, <sup>that</sup> ~~it~~ was a  
23 parole Contract for real estate  
24 executed fully upon his part, pos-  
25 session taken and still retained by  
26 said ~~land~~ <sup>Company</sup> which continues in the  
27 use and enjoyment of  
28 said ditches under said Contract with  
29 said Jackman; that such occupancy  
30 is an acceptance upon its part, and  
31 a ratification of said Jackman's  
32 act, if in fact he did not have  
express power to make the same.



1 that this acceptance binds said  
2 Company to its performance of its  
3 part of said Contract; and that  
4 a Court of equity will specifically  
5 execute this Contract; or make said  
6 ~~Company~~ pay in damages for its  
7 failure, to ~~to~~ do. This failure to do,  
8 Construct its rail track and make its  
9 stop Contracted for, damages your  
10 creditor not less than \$5000. ~~as~~ and he  
11 avers, that he would not have given  
12 his consent to the cutting of the ditch,  
13 aforesaid, had not said Jackson  
14 made the agreement mentioned: and it  
15 would have cost the said road great  
16 labor & expense to have, had to do  
17 otherwise than use said ditch as  
18 Contracted for by said Jackson.

19 Your orator further states that the  
20 daily damage done him, by failing  
21 to make said Creeping & Cattle guards  
22 or failing to make said stop one such  
23 that does not have an adequate  
24 remedy at law, and no mode could  
25 be invented by which, he could be  
26 compensated for the said road, <sup>failing</sup> to keep  
27 and perform its contract—

Besides your creditor is advised that a Court of equity will decree specific performance where one party has complied with the terms; and the other has failed on its part but taken the



1 benefit, derive from the part perform  
2 ance of the other party - your orator  
3 alleges, that he has fully performed his  
4 part - of the Contract mentioned in said  
5 deed, and made by parole with  
6 said Jackman. That said road  
7 has accepted the right of way con-  
8 veyed by said deed, and has the use  
9 Control & benefit of the two ditches  
10 cut by said Jackman under the Con-  
11 tract with him.

12 Your orator further states, that said  
13 road in its Construction, has gone  
14 out of its right of way, Cut Chan-  
15 nels for Indian Creek upon your  
16 orator's land, has Cut and dam-  
17 aged said land in many places & set  
18 in and upon it, by said depositions  
19 Cattle guards, Cattle, hogs, Sheep &  
20 horses to the damage of \$1000.00, to your  
21 Complainant.

22 The object of this bill therefore  
23 is:

24 First - To have specifically performed  
25 the Contract Agreement and Conditions and  
26 stipulations contained in said deed  
27 and such Cattle guards & crossings as are  
28 there set out, made at such points,  
29 as your orator may designate and  
30 point out.

31 That the Contract made with said  
32 Jackman be specifically performed



1 and a side track put-out its point  
 2 designated and regular stops of Trains  
 3 made at that point.  
 4 That an enquiry <sup>be directed</sup> to a Commission  
 5 or a jury <sup>compelled</sup> upon the law side of  
 6 this Hon Court be directed to enquire  
 7 and ascertain the damages already  
 8 done by said Road; failure to  
 9 keep & perform its Contract and  
 10 agreement, and the damage done by  
 11 its failure to construct suitable  
 12 crossing Cattle guards as specified  
 13 by said deed.

14 Or if mistaken, as to this, that an  
 15 enquiry of damage be had for  
 16 the act & doing of said Road to  
 17 give creator, land, outside its right  
 18 of way.

19 Or if not agreeable to the principles  
 20 of equity, to enforce said Contract, then  
 21 that said deed be set-aside held for  
 22 naught & Created void and said parcel  
 23 agreement be annulled, the possession  
 24 of said clutches be delivered to Giver  
 25 creator and that said road be com-  
 26 pelled to pay such damages as have  
 27 been sustained by Giver creator growing  
 28 out of the Contract with the said  
 29 Jackman; <sup>and get out in said deed.</sup> And should said deed be  
 30 set aside then that an enquiry be  
 31 made, as to the value of the said Estate  
 32 and the damage done to the residue of



1 of said fact.

2 To affect which your orator prays  
3 that the Louisville and Ashville  
4 Rail Road Company a body Cor-  
5 porate under by virtue of its  
6 laws of Kentucky & Virginia doing  
7 business in Virginia be made a  
8 party defendant to this bill  
9 and answer the allegations thereof  
10 upon oath and upon a hearing  
11 a decree be rendered, specific-  
12 ally performing the terms of its Con-  
13 tract set out in said deed; and  
14 specifically performing the terms of  
15 the oral Contract made with said  
16 Jackson and hereinbefore fully  
17 set out. That an enquiry be  
18 made of the damages mentioned  
19 in said bill, and that the same be  
20 decreed your orator; And if in  
21 any wise mistaken as to the measure  
22 and mode of relief then <sup>that</sup> he be  
23 granted all such other further and  
24 general relief, as he may be enti-  
25 tled to in a Court of Equity. May  
26 *supra* issue.

27 A. F. Onielmae

28 p.g.  
29  
30  
31  
32



Plff's Costs  
C 5.69

8 5.32  
\$6.19

Def's Costs  
C 2.44

Atty 15.00  
\$17.44

W. S. Ball

vs Bill Chis

L. & A. R. R. Co

1893 1st Sept. Rules Bill filed  
Spa End + Decree nisi.

" 2d Sept. Rules D. N. Suffer  
Cause set for hearing  
by Plaintiff

" Nov Term Contd  
1894 Contd this year

1895 March Term contd  
" June Term Decree  
final See Chas Order  
Book Page 242



M.S. Ball,

Plaintiff.

vs.

In Chancery.

L. & N.R.R. Co.

Defendant.

This cause came on this day to be heard upon the bill of the complainant and exhibits therewith, the demurrer and answer ~~and~~ ~~answer~~ of the defendant and exhibit therewith, joinder by the complainant in said demurrer, and was argued by counsel. On consideration whereof, the court is of opinion that said bill does not show grounds of equitable relief, and it is therefore adjudged ordered and decreed that said demurrer be and the same is hereby sustained, and that the ~~plaintiff~~ defendant recover of the plaintiff its costs about its defense in this case expended, for which execution may issue, and this cause is stricken from the docket.

Memorandum.-- ~~And~~ The complainant, suggesting that he is aggrieved by this decree, and desires to appeal ~~sixty days~~ from the same, it is ordered that execution be suspended for sixty days from this date.



